United States Department of Labor
Employees' Compensation Appeals Board

S.C., Appellant	)	
and	)	**Docket No. 19-1177**
	)	**Issued: August 27, 2020**
DEPARTMENT OF COMMERCE, CENSUS BUREAU, Hyattsville, MD, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
PATRICIA H. FITZGERALD, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 1, 2019 appellant, through counsel, filed a timely appeal from a March 11, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met his burden of proof to establish permanent impairment of his left lower extremity or more than six percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

FACTUAL HISTORY

This case had previously been before the Board.[3] The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 6, 2010 appellant, then a 58-year-old field representative, filed a traumatic injury claim (Form CA-1) alleging that, on February 21, 2010, he injured his left knee and right thigh when he slipped and fell on an icy street while in the performance of duty. OWCP accepted the claim for a left knee sprain and right thigh strain. Appellant did not stop work.

By decision dated June 5, 2012, OWCP terminated appellant's medical benefits, effective that date, as the evidence of record demonstrated that the accepted conditions had ceased without residuals. Following a telephonic hearing, by decision dated November 20, 2012, an OWCP hearing representative affirmed the June 5, 2012 termination of medical benefits. Appellant, through counsel, then filed an appeal with the Board. By decision dated September 24, 2013,[4] the Board affirmed the termination of appellant's medical benefits.

On January 13, 2015 appellant filed a claim for a schedule award (Form CA-7).

In support of his claim, appellant submitted a May 16, 2014 report by Dr. Stuart J. Goodman, a Board-certified neurologist. Dr. Goodman noted appellant's diagnosis, prior to the accepted February 21, 2010 left knee sprain, of degenerative osteoarthritis of the left knee. On examination, he observed an antalgic gait and noted tenderness to palpation of the left knee and right thigh. Dr. Goodman confirmed the diagnosis of degenerative arthritis of the left knee. Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[5] he found 10 percent permanent impairment of the left lower extremity based on a class of diagnosis (CDX) of 1 for osteoarthritis of the knee, with a grade modifier for clinical studies (GMCS) of 3 for decreased cartilage in the left knee.

In a February 23, 2017 report, Dr. Thomas M. McQuail, a Board-certified orthopedic surgeon, noted that appellant underwent a left knee total arthroplasty in approximately October 2016. He diagnosed a chronic right hamstring tear.

[3] Docket No. 13-1214 (issued September 24, 2013).

[4] *Id*.

[5] A.M.A., *Guides* (6th ed. 2009).

A May 10, 2017 magnetic resonance imaging (MRI) scan of the right thigh demonstrated moderate atrophy/fatty replacement of the semitendinosus and semimembranosus muscles, and the long head of the biceps femoris.

On June 13, 2018 OWCP referred appellant, a statement of accepted facts (SOAF), and the medical record to Dr. Alexander Doman, a Board-certified orthopedic surgeon, for a second opinion examination to determine the extent of permanent impairment of appellant's lower extremities, if any.

Dr. Doman provided a June 28, 2018 report in which he reviewed the SOAF and medical records provided. On examination, he found a stable left knee arthroplasty with full range of motion, slight tenderness over the hamstring muscles of the right thigh, and slight weakness of right knee flexion. Dr. Doman found that the accepted bilateral lower extremity injuries had reached maximum medical improvement (MMI). He opined that the accepted left knee sprain temporarily aggravated preexisting idiopathic osteoarthritis of the left knee, but had resolved completely by 2012. Referring to Table 16-4, page 512 (Hip Regional Grid -- Lower Extremity Impairments) of the A.M.A., *Guides*, Dr. Doman found a CDX of 1, a grade C impairment of the right lower extremity for a strain and history of rupture of the semimembranosus hamstring tendon, with a default value of five percent impairment. He noted a grade modifier for functional history (GMFH) of 1, a grade modifier for findings on physical examination (GMPE) of 1, and a GMCS of 2 for findings demonstrated on the May 10, 2017 MRI scan. Applying the net adjustment formula of (GMFH -- CDX) + (GMCS -- CDX), or (1-1) + (2-1) resulted in a net adjustment of 1, raising the grade C CDX to grade D, equaling six percent permanent impairment of the right lower extremity.

On July 30, 2018 OWCP expanded its acceptance of appellant's claim to include a right hamstring tear with muscular contraction of the thigh. It routed Dr. Doman's June 28, 2018 report, a SOAF, and the case file to Dr. Michael Katz, a Board-certified orthopedic surgeon serving as a district medical adviser (DMA), for review as to the extent of permanent impairment of appellant's lower extremities, if any.

In an August 1, 2018 report, the DMA concurred with Dr. Doman's impairment rating and method of calculation for permanent impairment of the right lower extremity. He noted that Dr. Doman correctly utilized the diagnosis-based impairment (DBI) rating method as the critical diagnostic factors for the accepted conditions of the claim were ineligible for an alternative range of motion (ROM) rating. The DMA further found that appellant had no permanent impairment of the left lower extremity as the accepted left knee sprain had resolved without residuals. He agreed that appellant had reached MMI as of June 28, 2018, the date of Dr. Doman's examination.

By decision dated August 31, 2018, OWCP granted appellant a schedule award for six percent permanent impairment of the right lower extremity (right leg). The period of the award, equivalent to 17.28 weeks of compensation, ran from June 28 to October 26, 2018.

On September 6, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on February 8, 2019. During the hearing, counsel contended that appellant's preexisting

osteoarthritis of the left knee should be considered in rating permanent impairment of the left lower extremity.

By decision dated March 11, 2019, OWCP's hearing representative affirmed the August 31, 2018 schedule award decision as modified to also find that there was no permanent impairment of the left lower extremity.

LEGAL PRECEDENT

The schedule award provisions of FECA[6] and its implementing regulations[7] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[8] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[9]

The sixth edition of the A.M.A., *Guides* provides a DBI method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[10] Under the sixth edition, for lower extremity impairments the evaluator identifies the impairment of CDX, which is then adjusted by grade modifiers of GMFH, GMPE, and GMCS.[11] The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).[12] The standards for evaluation of permanent impairment of an extremity under the A.M.A., *Guides* are based on all factors that prevent a limb from functioning normally, such as pain, sensory deficit, and loss of strength.[13]

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and extent of impairment in

[6] 5 U.S.C. § 8107.

[7] 20 C.F.R. § 10.404.

[8] *Id.* at § 10.404(a); *see also Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[10] A.M.A., *Guides* (6th ed. 2009), page 3, section 1.3, *The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement*.

[11] *Id.* at 493-556.

[12] *Id*. at 521.

[13] *C.H.*, Docket No. 17-1065 (issued December 14, 2017); *E.B.*, Docket No. 10-0670 (issued October 5, 2010); *Robert V. Disalvatore*, 54 ECAB 351 (2003); *Tammy L. Meehan*, 53 ECAB 229 (2001).

accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.[14]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish permanent impairment of his left lower extremity or greater than six percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

OWCP obtained a second opinion report from Dr. Doman on June 28, 2018. On examination Dr. Doman found a stable left knee arthroplasty with full range of motion, slight tenderness over the hamstring muscles of the right thigh, and slight weakness of right knee flexion. He found that the accepted bilateral lower extremity injuries had reached MMI. With regard to the left lower extremity, Dr. Doman opined that the accepted left knee sprain had ceased without residuals by 2012. With regard to the right lower extremity, he found a CDX of 1 for a strain and rupture of the semimembranosus hamstring tendon, with a default value of five percent. Dr. Doman assessed a GMCS of 2 for findings demonstrated on a May 10, 2017 MRI scan, resulting in a net adjustment of +1, raising the default value upward to six percent permanent impairment of the right lower extremity.

OWCP then properly referred the medical record to DMA Dr. Katz, who provided an August 1, 2018 report. With regard to the left lower extremity, the DMA concurred with Dr. Doman's opinion that appellant's accepted left knee sprain had resolved, with no permanent aggravation of preexisting osteoarthritis of the left knee. He therefore found that appellant had no permanent impairment of the left lower extremity. With regard to the right lower extremity, the DMA applied the appropriate tables and grading schemes of the A.M.A., *Guides* to Dr. Doman's clinical findings. He concluded that appellant had six percent permanent impairment of the right lower extremity due to the accepted right hamstring tear. The DMA provided mathematical calculations that are accurate and in accordance with the net adjustment formula contained in the A.M.A., *Guides.*

Both Dr. Doman and the DMA provided rationale to explain their opinions that appellant had zero percent permanent impairment of the left lower extremity and six percent of the right lower extremity. Accordingly, the weight of the medical opinion evidence is accorded Dr. Doman's June 28, 2018 second opinion report and the August 1, 2018 report of the DMA.

In support of his claim, appellant provided a May 16, 2014 report, wherein Dr. Goodman, found 10 percent permanent impairment of the left lower extremity due to left knee osteoarthritis. He also provided a February 23, 2017 report, wherein Dr. McQuail noted a total left knee arthroplasty, but did not address the issue of permanent impairment. To establish a schedule award claim, the medical evidence of record must include a description of the impairment including,

[14] *P.S.*, Docket No. 19-0486 (issued September 3, 2019); *A.R.*, Docket No. 19-0250 (issued May 6, 2019); *M.J.*, Docket No. 17-1776 (issued December 19, 2018); *P.R.*, Docket No. 18-0022 (issued April 9, 2018). *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5 (March 2017).

where applicable, the loss in degrees of active and passive motion of the affected member or function, the amount of any atrophy or deformity, decrease in strength or disturbance of sensation or other pertinent descriptions of the impairment. This description must be in sufficient detail so that the claims examiner and others reviewing the file will be able to clearly visualize the impairment with its resulting restrictions and limitations.[15] Neither Dr. Goodman, nor Dr. McQuail provided a rationalized medical report sufficient to support a finding of permanent impairment.

As there is no probative medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has any permanent impairment of the left lower extremity or greater than the six percent permanent impairment of his right lower extremity previously awarded, the Board finds that appellant has not met his burden of proof.

On appeal counsel contends that OWCP's March 11, 2019 schedule award determination is contrary to fact and law. As explained above, however, the medical evidence of record is insufficient to establish permanent impairment of the left lower extremity or more than six percent permanent impairment of the right lower extremity.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish permanent impairment of his left lower extremity or greater than six percent permanent impairment of his right lower extremity, for which he previously received a schedule award.

[15] *K.F.*, Docket No. 18-1517 (issued October 9, 2019); *A.T.*, Docket No. 18-0864 (issued October 9, 2018).

ORDER

IT IS HEREBY ORDERED THAT the March 11, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 27, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board